

Court of Appeals, State of Michigan

ORDER

People of MI v William Brian Story

Docket No. 277830

LC No. 06-004475-FH

Michael R. Smolenski
Presiding Judge

David H. Sawyer

Jane M. Beckering
Judges

The Court orders that the motion to remand for the purpose of conducting an evidentiary hearing pursuant to *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1993), is DENIED for failure to demonstrate a need for a remand. MCR 7.211(C)(1).

The Court further orders, however, that that portion of the judgment of sentence that directs Appellant to pay attorney fees is VACATED. The court erred in ordering Appellant to pay attorney fees without first assessing his ability to pay. *People v Dunbar*, 264 Mich App 240, 252-256; 690 NW2d 476 (2004). We REMAND so that the trial court may address Appellant's current and future financial circumstances and foreseeable ability to reimburse the county for attorney fees before determining whether Appellant should pay those fees. At the trial court's discretion, the decision may be made based on the record without the need for a formal evidentiary hearing. *Id.*

The trial court is to make findings of fact and a determination on the record. The trial court is to cause a transcript of any hearing on remand to be prepared and filed within 21 days after completion of the proceedings. This Court retains jurisdiction in the cause, and the time for proceeding with the appeal in this Court begins upon the issuance of an order in the trial court that finally disposes of the remand proceedings.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 04 2008

Date

Sandra Schultz Mengel
Chief Clerk